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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MARVIN KRONA,

11 Plaintiff,

12 v.

13 SCOTT FRAKES,

14 Defendant.

CASE NO. C11-688MJP

ORDER ADOPTING REPORT AND
RECOMMENDATION

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16 This matter comes before the Court on Petitioner Marvin Krona's Objections to
17 Magistrate Judge Theiler's Report and Recommendation. Having reviewed the Objections (Dkt.
18 No. 18), the Report and Recommendation (Dkt. No. 17), the state court record (Dkt. No. 16), and
19 all related documents, the Court ADOPTS the Report and Recommendation, DENIES
20 Petitioner's § 2254 habeas petition, and DISMISSES the matter with prejudice. The Court also
21 DENIES the issuance of a certificate of appealability.

22 **Background**

23 In the present habeas petition, Petitioner Marvin Krona alleges that he faced multiple
24 punishments for the same crime because the conduct underlying his felony convictions for

1 drunken driving served as the basis for imposing prior suspended sentences. (Dkt. No. 17 at 4.)
2 Mr. Krona also argues that his sentences should be served concurrently, not consecutively. (Dkt.
3 No. 18 at 2.)

4 **Discussion**

5 I. Double Jeopardy

6 Petitioner's first argument, that he was put twice in jeopardy for the same offense, fails as
7 a matter of law. Mr. Krona alleges that he was "first accused of being guilty of violations 1-14 by
8 Judge Castleberry on July 2nd 2008 and sentenced to 365 days" (Dkt. No. 18 at 1.) However,
9 a review of the record shows that Petitioner was not "accused" and then "sentenced" on July 2,
10 2008, but instead that his prior suspended sentence was imposed after the Court determined that
11 he had violated 14 conditions of his prior sentence. (Dkt. No. 18, Ex. A at 3-8.)

12 As Magistrate Judge Theiler explains, it is clearly established law that "returning a
13 defendant to jail for violations of supervised release on one sentence is part of the punishment
14 imposed for the original crime . . . and thus a separate prosecution for the violation is not barred
15 by double jeopardy." (Dkt. No. 17 at 4, citing United States v. Soto-Olivas, 44 F.3d 788, 789
16 (9th Cir. 1995).) Petitioner did not face multiple punishments when his suspended sentence was
17 imposed, because he was being punished for violating the terms of his January 2008 malicious
18 mischief conviction, not for his later DUI convictions. (Dkt. No. 17 at 5.)

19 Petitioner's statement in his Objections that the state court judge who re-imposed his
20 suspended sentence "admits to the double jeopardy issue" simply misstates the record. (Dkt. No.
21 18 at 1.) The court transcript that Petitioner attaches as "Exhibit A" to his Objections is a
22 truncated transcript where the words "double jeopardy" are mentioned, before the issue is
23 dismissed by the judge. (Dkt. No. 18 at 8.) While Petitioner relies on a passing reference to the
24 concept of double jeopardy by the trial court judge, Petitioner fails to note that the Washington

1 Court of Appeals has rejected Petitioner's double jeopardy argument multiple times. (SCR, Exhs.
2 14, 19, 24, 28; Cause Nos. 63995-1-I, 64230-8-I, 64295-2-I, 64495-5-I.)

3 II. Concurrent/Consecutive Sentences

4 Petitioner also fails to identify a Constitutional violation that has arisen because some of
5 his sentences are running consecutively, not concurrently. First, a review of the record does not
6 reveal any anomalies with regard to how Petitioner is serving his sentence. Mr. Krona's sentence
7 for his two felony DUIs explicitly states that the two sentences, for 42 months and 60 months,
8 are "to run concurrently with one another but consecutive to any other matters." (Cause No. 08-
9 1-02882-2, Criminal Sentencing/CSV Minute Entry.) Petitioner's claims regarding the
10 determination that his felony sentence should be served consecutively to his gross misdemeanor
11 sentences also fails. "Concurrent/consecutive sentencing outside the SRA is a determination
12 legislatively left to the trial judge." State v. Tu Nam Song, 50 Wn. App. 326, 326, 748 P.2d 273
13 (1988). Petitioner shows no Constitutional violation in the way his sentences were determined to
14 run either consecutively or concurrently.

15 III. Certificate of Appealability

16 Petitioner is not entitled to a certificate of appealability because no jurist of reason could
17 disagree with this Court's evaluation of his habeas claim on the issues of double jeopardy or
18 consecutive/concurrent sentencing. See 28 U.S.C. § 2253(c)(3); Miller-El v. Cockrell, 537 U.S.
19 322, 327 (2003). Petitioner also fails to address whether a COA should issue in his written
20 Objections. (Dkt. No. 18.)

21 **Conclusion**

22 Because returning a defendant to jail on a violation of supervised release is not
23 considered punishment for the purposes of double jeopardy and because Petitioner does not show
24 any Constitutional errors with regard to his consecutive sentences, the Court DENIES

1 Petitioner's habeas petition and DISMISSES this matter with prejudice. Because no jurist of
2 reason could disagree with this Court's evaluation, the Court also DENIES issuance of a
3 certificate of appealability.

4 The clerk is ordered to provide copies of this order to all counsel.

5 Dated this 21st day of February, 2012.

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9 Marsha J. Pechman
United States District Judge
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